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Applicant(s): Lisa Schmitt

Docket No.

P 1079.13001

Application No.

10/644,551

Filing Date

8-20-2003

Examiner

Bui, Luan Kim

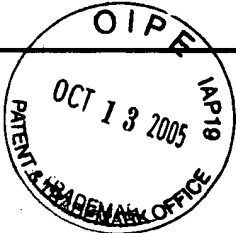
Customer No.

30615

Group Art Unit

3728

Invention: **MEASURING AND STORAGE CONTAINER**



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TRANSMITTAL LETTER
(General - Patent Pending)

Docket No.
P 1079.13001

In Re Application Of: Lisa Schmitt

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/644,551	8-20-2003	Bui, Luan Kim	30615	3728	6636

Title: MEASURING AND STORAGE CONTAINER

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Garth Janke, Reg. No. 40,662
BIRDWELL & JANKE, LLP
1100 SW Sixth Avenue, Suite 1400
Portland, Oregon 97204

Dated: October 10, 2005

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UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATIONS

Applicant: Lisa Schmitt

Group Art Unit: 3728

Serial No.: 10/644,551

Examiner: Bui, Luan Kim

Filed: August 20, 2003

Docket No.: P 1079.13001

Title: MEASURING AND STORAGE CONTAINER

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope with adequate postage addressed to: Commissioner for Patents, PO Box 1450, Alexandria VA 22313-1450 on this 10th day of October 2005.

Diane Thomas
Diane Thomas

Birdwell & Janke, LLP
1100 SW Sixth Avenue, Suite 1400
Portland, Oregon 97204

October 10, 2005

RESPONSE

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

Greetings:

This is responsive to the Office Action mailed September 27, 2005.

Restriction Requirement

As the Examiner indicates, claims 13 - 15 recite using a container (such as claimed in claims 1 - 12) by filling it with food and freezing it. The container could be made by a number of different processes, including molding, but it cannot be made by filling it with food, at least because it must

already have been made before it can be filled with food. Therefore, the allegation that claims 13 - 15 are related to claims 1 - 12 as process of making and product made as stated in the Office Action is clearly incorrect. Accordingly, the restriction requirement should either be withdrawn, or a proper ground for the restriction requirement should be provided in a non-final action.

Section 112 Rejections

Claim 6 stands rejected under 35 USC §112, second paragraph, particularly that “the elevation at which ice reaching said maximum fill elevation would contract when melted” is indefinite because “claim 1 is directed to a container only without any contents.”

Applicant respectfully traverses the rejection. First, it is not true that claim 1 is directed to a container only without any contents. Claim 1 is silent about contents, so it does not exclude the possibility of having contents, and a container that meets the requirements of claim 1 may or may not include contents.

Second, the phrase at issue is definite if its meaning can be definitely ascertained. Given a specified maximum fill elevation, “the elevation at which ice reaching said maximum fill elevation would contract when melted” can be definitely ascertained as a matter of scientific fact, so the phrase is definite.

Section 103 Rejections

Claims 1 - 4 and 6 stand rejected under 35 USC §103(a) as being unpatentable over Fraenkel, U.S. Patent No. 6,311,500 (“Fraenkel”) in view of either Shepard, U.S. Patent No. 2,863,305 (“Shepard”) or Hughes, U.S. Patent No. 5,520,278 (“Hughes”).

Shepard and Hughes disclose conventional, single containers with indicia. Such containers are well known, as probably every kitchen includes a measuring cup. The question is whether it would have been obvious to modify the ice cube tray of Fraenkel to include measuring indicia.

The Examiner asserts that it would, because Fraenkel teaches to fill the compartments in the ice cube tray to a level that is 6% below the full level (to accommodate expansion of the water when it freezes), and that indicia would make this “more convenient for the user when filling the compartments.”

This motivation is based on a mis-reading of Fraenkel. The ice cube tray in Fraenkel is not filled by the user. Rather, the tray is sold for retail sale as a pre-packaged product with water already in it, and is therefore filled during manufacture.¹ Therefore, adding filling indicia to the ice cube tray of Fraenkel would be of no help to the user.

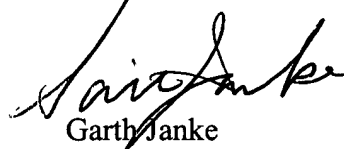
Adding filling indicia would also be of no help in manufacturing. Probably every canned or packaged food or drink product ever made for mass sale has a pre-measured amount of food or beverage that was dispensed into the can or package, no different than in Fraenkel. Such cans and packages never have indicia that are used for filling, because filling is always done automatically, by a dispensing machine, not a human being who fills by sight.

More generally, it can and should be appreciated that no user of an ice cube tray needs or wants to measure out precise, specific quantities of water for each of the twelve or fourteen different compartments in the tray, just to make ice cubes. Therefore, providing filling indicia in an ice cube tray would not address any known need or desire.

¹ Thus, “[p]ackaging 10 is designed to be sold off the shelf in stores at room temperature, wherein the water in each compartment 12 is in liquid form. Package 10 can then be placed into a freezer and the water in compartments 12 is frozen.” Col. 2, lines 58 - 61.

For all of the foregoing reasons, Applicant respectfully submits that the claims are in condition for allowance, and the Examiner is respectfully requested to allow claims 1 - 15 and pass this case to issue.

Respectfully,

A handwritten signature in black ink, appearing to read "Garth Janke", written over the printed name.

Garth Janke
Reg. No. 40,662
(503) 228-1841